

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 20

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte EARL S. MOORE and LOVELL B. REED

Appeal No. 98-2117
Application No. 08/370,170¹

ON BRIEF

Before MEISTER, STAAB, and CRAWFORD, **Administrative Patent Judges**.

MEISTER, **Administrative Patent Judge**.

DECISION ON APPEAL

Earl S. Moore and Lovell B. Reed (the appellants) appeal from the final rejection of claims 35, 37-39 and 41-53. Claims

¹ Application for patent filed January 9, 1995.

28-34 and 54-61 stands allowed.² Claim 40, the only other claim remaining in the application, has been indicated as being allowable subject to the requirement that it be rewritten to include all the subject matter of the claims from which it depends.

We REVERSE.

The appellants' invention pertains to a window frame comprising a plurality of frame members joined together at the corners. Of special importance is the provision glazing legs that slope inwardly at an acute angle and have substantially flat, planar glazing surfaces separated by a pocket for receiving a continuous bead of bedding compound. Independent claim 35 is further illustrative of the appealed subject matter and a copy thereof may be found in APPENDIX A of the brief.

The references relied on by the examiner are:

² Claims 35, 37, 39, 46, 47, 54 and 59 have been amended subsequent to final rejection in an amendment filed October 3, 1996 (Paper No. 8) and claim 59 has been a second time subsequent to final rejection in an amendment filed November 1, 1996 (Paper No. 10). Although the examiner has stated in the advisory actions mailed on October 22, 1996 (Paper No. 9) and November 11, 1996 (Paper No. 12) that these amendments would be entered, we observe that no clerical entry thereof has in fact been made.

Bancroft	2,852,113	Sep. 16, 1958
Redman	4,376,359	Mar. 15, 1983
Kloke	4,621,472	Nov. 11, 1986
Durham, Jr.	4,949,506	Aug. 21, 1990

The claims on appeal stand rejected in the following manner:³

(1) Claims 35-43 and 45-49 under 35 U.S.C. § 102(b) as being clearly anticipated by Redman;

(2) Claims 35-49 and 53 under 35 U.S.C. § 103 as being unpatentable over Bancroft in view of Redman;

(3) Claim 50 under 35 U.S.C. § 103 as being unpatentable over Bancroft in view of Redman and Kloke; and

(4) Claims 51 and 52 under 35 U.S.C. § 103 as being unpatentable over Bancroft in view of Redman and Durham.

Initially, we note that an anticipation rejection cannot be predicated on an ambiguous reference. *In re Turlay*, 304 F.2d 893, 899, 134 USPQ 355, 360 (CCPA 1962). Moreover, "A rejection based on section 103 must rest on a factual basis,

³ The advisory actions (see footnote 2) indicate that the final rejection of claims 46-49 and 59 under 35 U.S.C. 112, second paragraph, has been overcome by the amendments filed subsequent to final rejection.

and these facts must be interpreted without hindsight reconstruction of the invention from the prior art. . . . [The examiner] may not . . . resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in . . . [the] . . . factual basis." ***In re Warner***, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967), ***cert. denied***, 389 U.S. 1057 (1968).

Each of the above-noted rejections is bottomed on the examiner's view that Redman teaches a glazing leg 42 having a pair of substantially flat, planar glazing surfaces that extend substantially perpendicular to the planar surface of the frame members. In support of this position the examiner attached to the answer a greatly enlarged view of Fig. 4 of Redman as EXHIBIT A and labeled the surfaces believed to be flat and planar as 9A and 9B (in red ink).

In our view, the examiner's position is based on speculation. It is of course true that (1) a claimed invention may be anticipated or rendered obvious by a drawing in a reference, whether the drawing disclosure be accidental or intentional, and (2) a drawing is available as a reference for

all that it teaches a person of ordinary skill in the art.

See, e.g., *In re Meng*, 492 F.2d 843, 847, 181 USPQ 94, 97 (CCPA 1974). Here, however, we do not believe that Fig. 4 of Redman either teaches or fairly suggests flat, planar surfaces.

Patent drawings are not working drawings and the examiner's position is predicated on a greatly enlarged section of a small drawing that was obviously never intended to show the precise detail of the surfaces on the end

portion the Redman's member 42 that the examiner has designated as 9B.⁴ **See *In re Wilson***, 312 F.2d 449, 454, 136 USPQ 188, 192 (CCPA 1963). Moreover, viewing the examiner's enlargement of Redman's Fig. 4, we observe that, while the surface 9A appears to be depicted as flat and planar with reasonable clarity, surface 9B does not. In fact, the surface 9B appears to be more rounded than flat and planar.

⁴ The view that Redman never intended to show precise detail of the surfaces on the end portion the member 42 is apparent from the examiner's exhibit by a comparison of the end portion 9B on the left side with the "mirror image" end portion on the right side. That is, end portion on the right side appears to be significantly more flat and planar than the end portion 9B (which appears to be significantly rounded).

With respect to Rejections (2) through (4), we have carefully reviewed the teachings of Bancroft, Kloke and Durham, but find nothing therein which would overcome the deficiencies of Redman that we have noted above.

The examiner's rejections are all reversed.

REVERSED

JAMES M. MEISTER)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
LAWRENCE J. STAAB)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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MURRIEL E. CRAWFORD)	
Administrative Patent Judge)	

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Appeal No. 98-2117
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Page 8

Donald L. Otto
Renner Otto Boisselle & Sklar
1621 Euclid Avenue
Nineteenth Floor
Cleveland OH 44115